

## REMARKS

### I. THE OBJECTION UNDER 35 U.S.C. § 132

The Office Action objects to the amendment submitted on May 22, 2006, asserting that it introduces new matter. Applicants respectfully traverse the objection.

Upon filing the above-identified patent application, Applicants (1) indicated that “a peptide as described in [a] corresponding [application]”, i.e., attorney docket no. 038073-5005 PR, later identified as U.S. application serial no. 60/498,740, could be employed in accordance with the method of the invention and (2) incorporated the entire contents of the application by reference. This filing contains the sequence now presently claimed. See, e.g., U.S. application serial no. 60/498,740 at page 6, lines 8-9. Applicants amend the specification to claim priority to application serial no. 60/498,740.

Reconsideration and withdrawal of the objection to the amendment submitted on May 22, 2006 are respectfully requested.

### II. THE REJECTIONS UNDER 35 U.S.C. § 112, 1<sup>st</sup> ¶

The Office Action rejects claim 34 under 35 U.S.C. § 112, first paragraph, asserting that the claim contains new matter. In particular, the Office Action asserts that the specification does not provide support that the method of the invention could be employed for a subject undergoing radiation therapy. Applicants respectfully traverse the rejection.

Applicants respectfully submit that the specification specifically discloses that “a subject includes ***anyone who is a candidate for autologous stem cell or bone marrow transplantation during the course of treatment for malignant disease*** or as a component of gene therapy...” (See page 11, lines 21-25). At the time the application was filed, one skilled in the art would readily have appreciated that radiation therapy was a form of treatment for malignant disease. In addition, the specification discloses that “the clinical pharmacology of the TPO mimetic compound can be addressed by measuring the self renewal capacity of CD34<sup>+</sup> populations from the normal volunteers study, both in in vitro studies of the ability to sustain long term colony formation (the LTC-IC culture) ***and by performing SCID/NOD mouse repopulation assays in which the mobilized cells are infused into lethally irradiated SCID/NOD mice.*** (See page 16, lines 8-15).

Reconsideration and withdrawal of the rejection of claim 34 under 35 U.S.C. § 112, first paragraph, are respectfully requested.

The Office Action rejects claims 2-12 and 15-34 under 35 U.S.C. § 112, first paragraph, asserting that the claim contains new matter. In particular, the Office Action asserts that the specification does not provide support for the compounds claimed. Applicants respectfully traverse the rejection.

Applicants submit that for the reasons discussed in response to the objection under 35 U.S.C. § 132 above, the specification as filed provides support for the compound claimed.

### III. CONCLUSION

Early consideration and prompt allowance of the claims are respectfully requested. Should the Office require anything further, it is invited to contact Applicants' representative at the telephone number below.

Respectfully submitted,

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